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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

HANOVER SOCIETY FOR THE DEAF, INC.
Petitioner

vs.

BOARD OF SUPERVISORS OF
HANOVER COUNTY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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17 pp

QUESTIONS PRESENTED

I

Do the Fifth, Sixth, Ninth, and Fourteenth Amendments entitle Petitioner to compulsory process for obtaining witnesses in its favor?

II

Once State establishes a system for the distribution of bingo licenses, do Fifth and Fourteenth Amendment due process clauses impose requirement of fundamental fairness in treatment of the various applicants?

III

Do the equal protection and due process clauses require the State of Virginia to follow established precedent (in the highest Court of the State of Ohio) and require the evidence at trial "to indicate that applicant deliberately attempted to violate" the applicable statute?

IV

Are Virginia bingo laws, in particular, Virginia Code Section 18.2-340.1 unconstitutionally vague and repugnant to the due process and equal protection clauses of the Fourteenth Amendment?

V

Have the Petitioner's due process and equal protection rights been violated by a biased Trial Court's numerous rulings which denied Petitioner fundamental fairness; as required by the due process clause of the Fifth and Fourteenth Amendments?

VI

Is it a violation of the equal protection and due process laws for Virginia bingo laws to give a County Administrator, acting as an employee of a Board of Supervisors, "carte blanche" authority to approve or disprove permit applications, and to ignore principals of estoppel and laches?

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II. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO IMPOSE A REQUIREMENT OF FUNDAMENTAL FAIRNESS.

III. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO FOLLOW THE ESTABLISHED OHIO PRECEDENT WHICH REQUIRES THE EVIDENCE AT TRIAL "TO INDICATE THAT AN APPLICANT DELIBERATELY ATTEMPTED TO VIOLATE" THE APPLICABLE STATUTES.

IV. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BECAUSE OF THE REFUSAL OF THE STATE COURT TO FIND THAT THE CODE OF VIRGINIA FOR BINGO LAWS, SECTION 18.2-340-1 IS UNCONSTITUTIONALLY VAGUE.

V. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE TRIAL

COURTS NUMEROUS RULINGS WHICH WERE ADMITTEDLY BIASED AND DENIED THE PETITIONER FUNDAMENTAL FAIRNESS.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

The Petitioner, Hanover Society for the Deaf, Inc., respectfully pray that a writ of certiorari issue to review the decision of the Supreme Court of Virginia entered in this proceeding on July 30, 1993.

OPINIONS BELOW

The Orders of the Supreme Court of Virginia denying Petitioner's request for an appeal dated June 3, 1993 (Appendix B), and a subsequent Order denying Petitioner's request for a rehearing dated July 30, 1993, (Appendix C) appear in the Appendix. The Hanover County Circuit Court Order dated March 12, 1993 (Appendix A) is also included in the Appendix.

JURISDICTION

The Order of the Supreme Court denying Petitioner's request for an appeal was entered on June 3, 1993. A subsequent Order denying Petitioner's request for a rehearing was entered on July 30, 1993, and this petition for

certiorari is filed within 90 days of entry of that order. This court's jurisdiction is invoked under 28 U.S.C. 1257, 28 U.S.C. 2403 (B).

STATUTORY PROVISIONS INVOLVED

Amendments to the United States Constitution; Five, Six, Nine and Fourteen. (Appendix. D)

Code of Virginia; 18.2-340.1 Subsection (1A) and (1B), 18.2-340.6 (B2) and (B3), 18.2-340.9, Subsection (A), 18.2-340.10, and 18.2-340.12. (Appendix E)

STATEMENT OF THE CASE

The Petitioner was notified by Respondent via letter dated January 29, 1993, that its permit request was denied. The letter provided for a hearing on February 8, 1993, pursuant to Virginia Code 18.2-340.12. After Petitioner filed

suit requesting an Injunction to allow it to operate its regular Bingo games on Friday, February 5, and Saturday, February 6, 1993, the Respondent extended Petitioner's permit to February 9, 1993 at 5:00 p.m.

A hearing occurred on February 8, 1993 and following said hearing, the Respondent, through its Administrator, denied (in writing) its permit. (Appendix F)

Petitioner appealed that decision pursuant to Virginia Code 18.2-340.12 to Hanover Circuit Court. After a hearing on February 12, 1993, on Petitioner's Motion for a Temporary Injunction to allow it to continue operating bingo games in Hanover County pending Appeal to the Circuit Court, the Court granted

Petitioner a Temporary Injunction until the Appeal date of March 5, 1993. Petitioner obtained a subsequent Injunction until March 10, 1993, when the hearing date was postponed until March 10, 1993. A briefing schedule was set.

At the February 12, 1993 hearing, it was directed by the Court that a transcript of the hearing be prepared and that the entire file and records be forwarded to the Court. It was also discussed that the Appeal would consist of the hearing before the Administrator, the entire files and records, Memorandum, and such other evidence as necessary to obtain the ends of justice.

Petitioner and Respondent filed Memorandum which included Addendums. Respondent prepared its proposed records and made it available to Petitioner about

seven (7) days prior to March 1, 1993.

Petitioner had requested complete copies of the entire file and records for all other eleven Hanover County Bingo permit holders and permit applications for 1993 permits. This material was requested in early February, 1993 and was not available to Petitioner until after the February 8, 1993 hearing and after the February 9, 1993 rejection letter (Transcript of March 10, 1993 Circuit Court hearing hereinafter referred to as Tr.) (Tr. page 26).

The Addendum filed by Petitioner and record filed by Respondent contained material each considered relevant to the issues in this case. They include material which is a matter of public record, by Statute, including all the

audit opinions and permit approval or denial letter for Petitioner and the other permit holders in Hanover.

The Addendum filed by Petitioner and records filed by Respondent also include documents, Codes, and other material from the Health Department, Sheriff's Department, Financial Department, County Administrator, County Attorney, and Society records. Other material including evidence of compliance and support for Petitioner and members' letters relating to the issues were also filed in the Addendums.

Petitioner and Respondent did not object to the Court's consideration of all of the material contained in Petitioner's Addendum or Respondent's record. Petitioner and Respondent both argued and discussed in open argument

material in the Addendum and Record. The Court read, considered, and addressed material contained in both the Addendum and the Record in an effort to reach the ends of justice and fairly decide the appeal. (This material, along with the transcript of the March 10, 1993 hearing, and the entire record were forwarded to the Virginia Supreme Court as part of the official record.)

Before the hearing on March 10, 1993, the Court heard Oral Motion for Summary Judgment by Petitioner, and a Motion by Respondent to limit consideration by the Court of only the Memorandum (which is part of the record) filed by Petitioner prior to the March 10, 1993 hearing which set out Constitutional due process and equal

protection arguments. It included references to the critical Ohio case, Comforter of the Afflicted Children's Center, Inc., v. Brown, 424 N.E. 2d 323. That case established Fifth and Fourteenth Amendment Constitutional rights for bingo permit holders, and also established the evidentiary standard test of proof of a deliberate attempt to violate bingo statutes which were often vague.

The Petitioner's Memorandum cited numerous federal and other state decisions which are contrary to the ruling of the Virginia Supreme Court in this cast (Trial Memo. pages ii and iii). All of these cases were cited to the Virginia Supreme Court.

The Respondent cited no cases in its memorandum to the Hanover Circuit Court.

The Petitioner, at the March 10, 1993 hearing, objected to the Circuit Court's unconstitutional ruling denying the right to put on witnesses and refusing its due process and equal protection arguments.

In its Petition for Appeal and Petition to the Virginia Supreme Court to Rehear, Petitioner assigned as error all of the due process and equa. protection arguments it is presenting to the Court today. (Assignments of error 1 -23, Appendix G)

The Court denied Petitioner's Motion and granted Respondent's Motion. Therefore, Petitioner's four critical witnesses and the Respondent's one subpoened witness were not allowed to testify. Also critical documents were

not admitted. Petitioner objected to this ruling since documents offered were in direct response to misrepresentation by Respondent of important facts in this case.

Petitioner had concerns over the proposed record of Respondent and added relevant material from the Respondent's Administrator files pertaining to this issue.

Petitioner and Respondent have worked diligently in examining all Administrative files, which are public record as pertaining to bingo audits, and otherwise available to the public in putting together both the Respondent's Record and Petitioner's Addendum, in attempting to meet the ends of justice.

The transcript of the hearing on March 10, 1993 was made a part of the

record by the Court's final Order of March 12, 1993. The Court specifically refused the Petitioner's prayer for a Permanent Injunction and its prayer for a stay pending Appeal. (Appendix. A)

Petitioner has been in existence since 1975. It has held a bingo permit since 1978. Its game has always proceeded without Respondent or Court interruption until this proceeding. It obtains an annual permit from Respondent. Two earlier Court proceedings, 1981 and 1985, never resulted in Petitioner being unable to hold bingo games for even one day. It has enjoyed IRS 501 C 3 Status throughout the years of existence. Its basic operation has been very similar, with very similar expenses (use of proceeds) throughout the years of its

existence. Its annual permit has been renewed every year. In this case, Petitioner filed for renewal of its permit on December 18, 1992. The annual period which is reviewed is for the permit calendar year from October 1, 1991 through September 30, 1992. Respondent took a shotgun approach in denying Petitioner's permit. It ignored the fact that the reasons for refusing Petitioner's permit were cured or legally unenforceable. The trial Court Judge found Respondent had not abused its discretion in denying Petitioner's permit and that Petitioner's many Constitutional rights were not violated. The Respondent and Trial Court found Petitioner was not "operated exclusively" for charitable purposes. The Virginia Supreme Court refused to hear this Appeal on June 3,

1993 (Appendix B) and refused Petition to Rehear on July 30, 1993 (Appendix C).

ARGUMENT AND REASONS FOR GRANTING THE WRIT

I. PETITIONER'S RIGHT TO DUE PROCESS OF LAW HAS BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO ALLOW THE PETITIONER COMPULSORY PROCESS FOR OBTAINING WITNESSES IN ITS FAVOR.

The Court denied Petitioner due process and fundamental fairness by refusing to allow witnesses to testify at the March 10, 1993, hearing (Tr. pp. 22-34).

Petitioner had no subpoena power at the Administrator's hearing, and other permit holder's records were not

available until after February, 9, 1993. New and unjustified allegations were made in Respondent's trial memorandum (Tr. pp. 21, lines 23--24, Tr.24 lines 15-18), which was filed after the Petitioner's trial memorandum -- and not subject to rebuttal under the briefing schedule.

Mr. Charles Ayers (Petitioner's real estate attorney since 1981); Mr. Frank Stahl (Petitioner's Certified Public Accountant for many years); Ms. Mary Messick (the Respondent's bingo auditor); and Robert D. Eddleton (Petitioner's Secretary / Treasurer) were critical to rebut Respondents reasons for denying the permit and for proving Petitioner's due process and equal protection rights had been denied.

Mr. Charles Ayers would have testified to the 1981 real estate

transaction, and to the fact that the Petitioner's mortgage interest rate (Petitioner had a 1981 mortgage at 20% interest) "was not excessive" based on 1981 rates (Tr. p. 22 line 18). He would have also testified that the Petitioner had violated no bingo laws and he had assisted Petitioner in trying to obtain "refinancing" (Tr. p. 22. line 19).

Petitioner's C.P.A., Frank Stahl was critical to prove that the Respondent's eleven points for denying the permit were false or unenforceable (Tr. p 24, line 17--24). He also had access to the entire audit reports for the other eleven permit holders (approximately 1800 pages) approximately one week after February 9, 1993. His analysis and testimony was critical to proving the Respondent had

acted in a "totally arbitrary and capricious" manner towards the Petitioner (Tr. p. 25, line 6).

Ms. Mary Messick was critical to prove also that the Respondent's "actions are arbitrary and capricious" (Tr. p. 25, line 18), based on a comparative analysis of the way other bingo permit holders were treated.

Mr. Robert D. Eddleton, whom Respondent had also subpoened for the March 10, 1993 hearing, was critical to rebut each and every allegation of Respondent (Tr. p. 33, line 11, Tr. p. 34 lines 1--3).

The trial Court ruled "You can let the witnesses go" (Tr. p. 34, line 19).

The Petitioner replied "Yes sir, for the record we note our objections. For failure to let us go forward with

witnesses" (Tr. p. 35, lines 5--9).

Petitioner alleges that the failure of the Court to allow witness to testify at the trial was critical. The Court decided to decide the case on the record. It relied on the memorandum, the hearing before the Administrator on February 8, 1993, the Addendum, and the Argument of Counsel.

Petitioner's rights were denied because "on February 12, 1993, the Court directed that the case be decided on the February 8, 1993 transcript, memos, entire files and records, and such other evidence as necessary to meet the ends of justice" (Tr. p. 21, lines 16--24; Petitioner's Petition for Appeal and Petition to Rehear, page 1, lines 25--28). Respondent agreed with Petitioner

that "such other evidence as necessary to meet the ends of justice" was ordered by the trial Court on February 12, 1993, to be part of the decision making process for this appeal.

(Respondent's Brief in Opposition to Petition for Appeal. Page 3, line 1-4).

Comforter of the Afflicted Children's Center. Inc. v. Brown, 424 N.E 2d 323 (Cited now in Ohio bingo code, and annotations, and not adversely commented on anywhere in American Jurisprudence) sets forth Fifth and Fourteenth Amendment Constitutional protection for bingo permit holders. It holds "once a state established a system for the distribution of bingo licenses, due process clause imposed a requirement of fundamental fairness in treatment of the various applicants, R.C. Section 2915.01 et eq.

U.S.C. Const. Amends. 5,14." Comforter, page 323.

That case, which the Ohio Supreme Court denied a motion to certify the record on September 26, 1980, places Virginia and Ohio in direct conflict.

If an applicant in Ohio is entitled to fundamental fairness, certainly one in Virginia is as well. And how can denying witnesses from testifying be fundamentally fair. As argued to the trial Court and Virginia Supreme Court, Petitioner had no subpoena power for witnesses at the Administrative hearing. Its real estate lawyer, Mr. Charles Ayers, could not be present on February 8, 1993. Its accountant, Mr. Frank Stahl, had to leave in the middle of the hearing-- which was dragged out by

excessive questioning from the Sheriff and his representative. The Petitioner also had no proof of the way it was being treated as compared to other permit holders because all 1800 pages of Respondent's audit reports on all other permit holders were not available until well after the February 8, 1993 Administrative hearing. (The other reports were Ordered by Petitioner from Respondents records immediately after the Petitioner received the Respondent's permit denial letter dated January 29, 1993.) In Addition, the Respondent's trial memorandum was grossly factually flawed as will be shown by later argument.

Certainly due process rights under the Fifth and Fourteenth Amendments are violated by the refusal to let witnesses

testify.

Also the Sixth amendment requirement of compulsory process for witnesses is violated because bingo statutes in Virginia contain certain penal provisions (18.2-340.10) (Appendix E).

The Ninth Amendment to the Constitution reserves to the people rights not enumerated in the Constitution. (Appendix D)

Petitioner argues that in a civil, criminal, or quasi-criminal proceeding like this one, the power to call witnesses is a protected right which was violated.

Petitioner's lawyer should not have to stand up and argue every fact, when lay and expert witnesses have first hand and expert knowledge of the relevant

facts of this case (Amendments Five and Fourteen). (Appendix D)

"The right to enforce the attendance of witnesses derives, not from privilege conferred upon individual litigants, but from the rights and necessities of society generally, so that the demand comes from the community as a whole--from justice as an institution, and from law and order as indispensable elements of civilized life." 81 Am Jur. 2d Witnesses Section 2 p. 39; Application of Barbara (3d Dept) 7 App Div 2d 340, 183 NYS 2d 147.

After being told by the trial Court in February 12, 1993, that the appeal, under the confusing Virginia statutes, would include "such other evidence as necessary to meet the ends of justice", and then refusing witnesses testimony is

a denial of fundamental fairness (Amendments, Five, Six, Nine, and Fourteen). (Appendix D)

II. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO IMPOSE A REQUIREMENT OF FUNDAMENTAL FAIRNESS.

Petitioner has clearly urged the trial Court and Virginia Supreme Court to impose the standard of fundamental fairness. From the very beginning of these proceedings. including the filing of Petitioner's pretrial memorandum with references to the Comforter requirement of the fundamental fairness, the Petitioner has urged that this must be done. The Virginia Supreme Court has never adopted the fundamental fairness

requirement for any bingo permit holder.

The failure of the Virginia Supreme Court to adopt this standard in this case, which contains numerous instances of denial of fundamental fairness to Petitioner, begs to be addressed by this Court.

The Petitioner argued to the trial Court " We take the position that the law that we've sited shows that we are entitled to fundamental fairness under the Comforter case cited by the Supreme Court of Ohio, which deals with rights, and establishes that fact when State set bingo laws and set up an organization that triggers the fundamental fairness of treatment for that organization,..... The Court recognized further the rights under the Constitution of the United States, the Fifth and Fourteenth

Amendment, the certain rights that were there." (Tr. p. 37, lines 14--25, Tr. p. 38, lines 1--2) Petition for Appeal, and Petition to Rehear, p. 4, and citations of cases in those petitions.

III. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE REFUSAL OF THE STATE COURT TO FOLLOW THE ESTABLISHED OHIO PRECEDENT WHICH REQUIRES THE EVIDENCE AT TRIAL "TO INDICATE THAT AN APPLICANT DELIBERATELY ATTEMPTED TO VIOLATE" THE APPLICABLE STATUTES.

The Comforter Court set the evidential standard which the trial Court failed to accept. "Evidence failed to indicate that applicant deliberately attempted to violate the Act and the

provisions of the Act were unclear concerning operation of concession stands at bingo sessions." Comforter at page 323.

Petitioner submits the Court had to find a "deliberate attempt" to violate the law. The Court made no such finding. No evidence to sustain any such finding exists.

How can again requesting, for annual approval, virtually the same expenses, to the same people, be a deliberate attempt to violate law (Tr. pg. 48 L. 13-24)?

Just as the Comforter Court found that applicant had persistently tried to comply with Ohio law, the Petitioner submits the record is replete with its efforts to comply with the Law.

Petitioner told Respondent's Administrator on the record in no

uncertain terms to let it know what would be necessary to obtain approval of its permit. In his continuing effort to deny Society fundamental fairness, this was never done. The trial Court and Virginia Supreme Court were fully advised of this position.

The failure of the trial Court and the Virginia Supreme Court to adopt this evidentiary standard denied Petitioner his Constitutional rights (Fifth and Fourteenth Amendments).

Petitioner's counsel argued to the trial Court "The Court (Comforter) specifically found that these had to be a deliberate violation of -- deliberate intent to violate the law, . . . " (Tr. P. 38, L. 2-4), (Petition for Appeal and Petition to Rehear, Page 4, and citations

of cases in those Petitions).

IV. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BECAUSE OF THE REFUSAL OF THE STATE COURT TO FIND THAT THE CODE OF VIRGINIA FOR BINGO LAWS, SECTION 18.2-340-1 IS UNCONSTITUTIONALLY VAGUE.

Petitioner's counsel argued to the trial Court "the Statute couldn't be vague or couldn't be ambiguous in that area." (Tr. p. 38, L. 4-5)

"The County Administrator abused its discretion in denying the Hanover Society a bingo application because they relied on vague Statutes and Ordinances," (Tr. p. 42, L. 18-21).

Respondent never cited or proved one specific objective Code Section Petitioner had allegedly violated.

The Administrator's February 9, 1993 reason for denial which was apparently affirmed by the lower Courts noted:

"It is my conclusion that the Jamaica Club bingo games are not 'operated exclusively for religious, charitable, community, or educational purposes', as required by law." (App. D)

This apparent reference to Virginia Code Section 18.2-340.1 is vague on its face and not supported by the facts.

Virginia Code Section 18.2-340.1 Definitions at 18.2-340.1 (B), (Appendix E), states, in part, "An organization operated exclusively for religious, charitable, community on educational purposes".

This section, which the Administrator and the lower Courts have

apparently relied on, must be read along with Virginia Code Section 18.2 - 340.9 A (Appendix E) Prohibited Practices (A) Except for reasonable and proper operating costs, including costs associated with providing clerical assistance in the conduct of bingo games or raffles for organizations composed of or for deaf or blind persons, publicizing the time and place of bingo games and raffles, and prizes, no part of the gross receipts derived by an organization, as herein defined, permitted to conduct bingo games or raffles may be used for any purpose other than (i) those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized and (ii) expenses relating to the acquisition, construction,

maintenance, or repair of any interest in the real property involving the operation of the organization and used for the lawful, religious, charitable, community or educational purposes.

The Statutes are unconstitutionally vague because, in their application, inconsistent results were reached for all other years of Petitioner's existence based on same or very similar expenses and operational practices.

All Petitioner has to do is to annually report its income and expenses and have a C.P.A. certify that they are reasonable, necessary, and proper. (Virginia Code Section 18.2-340.6 B 2 and Virginia Code Section 18.2-340.6 B 3.) (Appendix E.)

This was done by Petitioner. Respondent's reference to it was not "operated exclusively" all fail because its expenses were approved and not proven to be improper or excessive by Respondent.

When a Statute or Ordinance is so vague as to convey no definite meaning to those persons whose duty it is to execute it, the Statute or Ordinance must be deemed void as a matter of law. Potomac Greens Associates Partnership v. City Council of City of Alexandria, 761 F. Supp. 416 (E.D. Va. 1991) (applying and construing Virginia law). A Statute or Ordinance is void for vagueness if it fails to give a reasonably intelligent person notice that his contemplated conduct is forbidden. Pedersen v. City of Richmond, 219 Va. 1061, 254 S.E. 2d 95

(1979); Flannery v. City of Norfolk, 216 Va. 362, 218 S.E. 2d 730, appeal dism'd, 424 U.S. 936 (1975).

How could the Petitioner know that its permit would not be approved because it was not "operated exclusively". Expenses have not fundamentally changed over the years. This year, the Petitioner has actually raised more cash than other years.

What standard is being used for the Petitioner to know what is meant by "operating exclusively". It has tried to comply with the unclear meaning of this section. It can only rely on its good faith efforts to comply with the Law and the finding of an independent C.P.A., as well as the established approval practice of the County.

Also, to look at one year and not look at all of the years of the Petitioner's hearing aid, charitable, and service contributions is very unfair. All prior years' reports of charitable contributions for Petitioner are in the record.

What does "operate exclusively" mean when reasonable, necessary, and proper expenses are paid? Petitioner's mortgage payments have been approved for every year from 1981. Its catering, concession stand, and general expense practices have always been approved. Its practice of having one major annual seminar (Attended in 1992 by over 400 deaf and hearing impaired) have always been approved. Its open door policy to the deaf and its accumulation of cash in its accounts titled in its corporate account for the

deaf have always been approved. Why is it now being turned down? What is different from this year as compared to other years. There is no showing Petitioner's did any less for charity this year than any other prior year.

The wording "operated exclusively" is simply vague in its application for consideration with other bingo Statutes under the facts of this case.

V. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE TRIAL COURTS NUMEROUS RULINGS WHICH WERE ADMITTEDLY BIASED AND DENIED THE PETITIONER FUNDAMENTAL FAIRNESS.

VI. PETITIONER'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS OF LAW HAVE BEEN VIOLATED BY THE STATE

COURT RULINGS WHICH FOUND THAT VARIOUS CLAUSES OF THE CODE OF VIRGINIA BINGO LAWS GIVE THE COUNTY ADMINISTRATOR, ACTING AS AN EMPLOYEE OF THE BOARD OF SUPERVISORS, "CARTE BLACHE" AUTHORITY TO APPROVE OR DISPROVE PERMIT APPLICATIONS AND IGNORES PRINCIPLES OF ESTOPPEL AND LACHES.

The United States Supreme Court laid down the rule although an ordinance might be facially fair and impartial, a citizen's right to equal protection of that law under the Fourteenth Amendment to the United States Constitution can be violated when a public authority administer the ordinance with an "evil eye and unequal hand," so as to discriminate between persons in similar circumstances. Yick Wo. v. Hopkins, 118

U.S. 356, 373-74 (1886).

A valid ordinance granting a public authority the discretionary power to grant or deny and application for a permit to carry on a certain activity, trade, or occupation can be carried out in an unconstitutional manner when a public authority or administrative board acts arbitrarily in withholding a permit form one particular applicant, while granting them to other similarly situated applicants. City of New York v. Van De Carr, 199 U.S. 552 (1904).

In the case at bar, the Respondent acted arbitrarily and discriminatory in denying the Petitioner's application for a bingo permit on the alleged grounds that an insufficient amount of its revenues are devoted to charitable

purposes as opposed to operating expenses, while at the same time, the Respondent granted bingo permits to other organizations that devote similar amounts or percentages of their revenues to charitable purposes, as opposed to operating costs (Respondent's trial Record page 8 and 16).

For example, in letters written by officers in the Hanover County Sheriff's office, it appears that the average percentage of income that the 13 organizations that held 1991 bingo permits devoted to charitable contributions was 10.75 % (Petitioner's Memo. Exh B (Letter from Sgt. D. R. Hines to Lt. H. L. Wray); Letter from Investigator Gooch to Sgt. Hines). In comparison, the Petitioner devoted 10.37% of its 1991 income to charitable

contributions in 1991. (Petitioner's Memo. Exh. C (Petitioner's 1991 County Audit Report)). By way of further comparison, a graph prepared by the Respondent which shows how much various organizations devoted to charitable contributions demonstrates that the Petitioner's 1991 charitable contributions compared favorably with those of other similarly situated organizations that held bingo games. (Petitioner's Memo. Exh. D. (Bingo Audit Report Graph for Organizations with Incomes Between $ 500,000 and 1,000,000)).

In sum, the Respondent's own records demonstrate that the County Administrator acted arbitrarily and discriminatory in denying the Petitioner's bingo permit

application on the alleged grounds that the Petitioner does not devote enough of its revenues to charitable purposes. The Respondent's arbitrary and discriminatory conduct is clearly evidenced by the fact that the Respondent's own investigation reports reveal that other similarly situated organizations that devote almost identical percentages of their incomes to charitable donations received approval of their bingo permit applications. Since the Respondent engaged in arbitrary and discriminatory acts toward the Petitioner, the Respondent violated the Petitioner Constitutional right to equal protection of law. The Respondent misled the Court because although the 1993 General Assembly passed legislation (House Bill 2313) allowing a locality to

set percentages of gross proceeds for charity, that was not in effect until July 1, 1993. After that date, a local ordinance would have to pass. (Tr. p. 6, lines 8--13.) The Respondent acted prematurely. (The Hanover County Board of Supervisors refused to locally adopt this ordinance in September of 1993 by a 4 to 3 vote -- thereby rejecting the Respondent's position.)

Respondent tried to argue to the Court that its own figures are wrong because mortgages are to be consider the same as rent and are not charitable contributions. The Respondent's own graphs and charts reflect mortgage payments for percentage of charitable contributions for other bingo organizations, but, the Respondent argued

the Petitioner is to be treated differently from the way the Respondent classifies other organization's mortgage payments. The Court erred by not recognizing that mortgage payments are not rent, and must be considered charitable use of proceeds. Virginia Code section 18.2-340.9

The critical fact in understanding this case it that the Respondent admitted to the Court on March 10, 1993 that it had changed the rules and standards this year, after the fact, for granting approval of annual permits. (Tr. p. 67, lines 2--5.) " Mr. Ganey has made some reference to the fact that the County is looking at bingo permits differently than it has in the past, and we submit that is true."

Comforter of the Afflicted Children's Center, Inc. v. Brown, 424 N.E. 2d 323 (cited now in Ohio bingo Codes and Annotations and not adversely commented on anywhere in American Jurisprudence) sets forth Fifth and Fourteenth Amendment Constitutional protections for bingo permit holders. It holds "once state establishes system for distribution of bingo licenses, due process clause imposed requirement of fundamental fairness in treatment of various applicants", Comforter, page 323.

Petitioner has been denied fundamental fairness and due process throughout this case. (Petition for Appeal, and Petition to Rehear pages 4--14).

The Court had ample evidence that

all of the Respondent's 11 points were cured or legally unenforceable. There is no legal Code Authority requiring Petitioner to refinance its mortgage. Petitioner attempted to refinance. Court had reference to a copy of a bank's rejection letter in the Addendum. Respondent's mention of the concession stand operation was a new point not covered until Respondent's trial Memorandum. The Comforter decision overrules this point, and it would have been cured by Petitioner.

Payments to member are proper as long as they are not "excessive" and are "reasonable" under the Internal Revenue Code 501 (c) (3); Texas Trade School v. Commissioner, 272 F 2d 168 (5th Cir. 1959), Brian Rudd International v. Commissioner 66 A.F.T.R. 2D (P-H) 90-5--

7 (D.C. 1989).

Petitioner testified before the Administrator that it held annual elections. Officers, who had never been previously objected to by Respondent were fairly re-elected. The only evidence the Court had was that Petitioner was a "representative form of government" "organized to carry on some worthy civic or service purpose. " State Ex Rel Sanborn v. Kalb, 543, P. 2d 872 at 878. The Sanborn case is the only case which attempts to define what is a charitable organization within the meaning of bingo codes. Petitioner meet that test. It provides an annual seminar attended by hundreds of deaf people. It makes its property available to the deaf. It buys hearing aids and many other devices for

the deaf. It has made many thousands of dollars in civil, community, and hearing related contributions. (All itemized in prior annual reports filed in the record with the Court and Respondent.)

No evidence was offered that Petitioner had ever turned down anyone for membership, or that Petitioner had ever not provided financial assistance for a hearing aid or any other requested financial assistance.

Respondent's false references to lack of internal control misses the point. All of Petitioner's income and expenses have been fully approved by the Respondent. Expenses were almost identical this year. Petitioner's C. P. A. report certified its expenses were reasonable and proper. That was all

Petitioner had to do under the Codes.

In addition, the Court had proof that "lack of internal controls" was a comment made about, almost all; if not all other permit holders. That the Respondent's own reports of other organizations prove many violations of specific Code Sections on the part of other permit holders. An itemized list of those presented to the trial Court of the Respondent's own findings of violation by other organizations is as follows: Limited Accounting Controls exercised over cash receipts; Compliance violations of Virginia Code Sections 18.2-340.5; gross receipts from the playing of instant bingo shall not exceed 33 1/3 per centum of the gross; Compliance violations of Virginia Code

Section 18.2-340.3 from the playing of pull tab devices; Compliance violations of Virginia Code Sections 18.2-340.9 G, specials exceeded $ 100.00, poor internal controls, cash payments made without payment vouchers, no inventory controls for supplies, untimely deposits, no receipts or disbursement journals, admission receipts not matching game logs, missing receipts whereby the bank deposits do not match the nightly games logs, and nightly games logs containing no useful information, no membership lists; no oaths signed; payments for mortgage payments as use of proceeds; payments for rents, etc. made to a related party without any lease agreements signed; cash missing or the necessity to replenish cash loss; non-sufficient funds and bank charges for

returned checks; bank accounts not labeled or segregated properly; Transfers as a Use of Proceeds; Price Club and Sam's Club memberships for more members that Petitioner, overpayments or incorrect ending balances; equipment for food preparation and food costs; large (over $ 220,000.00) ending bank balances. (Addendum pages 221 through 387, itemized on Petition for Appeal, pages 17-19), (Petition to Rehear, pages 6 and 7).

The Court erred by ignoring that other organizations applying for bingo permits were treated differently. The Respondent granted bingo permits to all other organizations except the Petitioner and the organization that rented from Petitioner. The Respondent gave other organizations time to correct

deficiencies granted permits despite compliance violations, allowed others to sign Corrective Agreements and told others they would be sent management letters. The Respondent refused Petitioner all of the above (Addendum pages: 359, 361, 362, 363, 382, 395, 396, 402, 403, 409, 410, 416, 417, 421, 422, 423, 424, 425, 429, 431, 432, 433, 434, 439, 440, 446, 447), (Petition to Rehear page 7).

The Court erred and denied fundamental fairness by refusing the 1985 letter from the then, and now, Assistant County Attorney, Lisa Barker. (Appendix H). That letter proves that Respondent's argument to the trial Court that it did not know about the terms of the real estate sale and mortgage until 1992 was false. Respondent told trial Court "

Your Honor our understanding that prior to the fall of '92 there have been times where these documents were shown to County officials, we were never allowed to keep a copy, there is no copy in the Court's records. There are no copies. There was no copy of the County's records until 1992." (Tr. p. 31, lines 22--25, p. 32, lines 1--3.)

The Court erred by not considering Petitioner's article on interest rates for this type of investment in 1981.

Court refused to substitute its judgement for that of a local authority where there has been an "abuse of power" by such political subdivision, Byrum v. Board of Supervisors of Orange County, 217 Va. 37 225 S.E. 2d 369 (1976).

The Court denied Petitioner

fundamental fairness by requiring it to comply with an unknown standard for "operating exclusively". Petitioner tried to comply with unclear meaning of that section. It can only rely on its good - faith efforts to comply with the law and the finding of an independent C.P.A. as well as the established practice of the Respondent.

The Court denied fundamental fairness by looking only at 1992 and not at all the years of Petitioner hearing aid, charitable, and service contributions.

In the case at bar, the Respondent contends that Petitioner is not "operated exclusively for charitable purposes" because it purchased property and catering services from members of the Eddleton family. The Petitioner does not

dispute the fact that a member of the Eddleton Family transferred realty to the Petitioner and took back a note and deed of trust with an interest rate of 20% in 1981 or that a member of the Eddleton family was paid for catering a special event hosted by the Petitioner. Petitioner argues that, in the absence of evidence that the Petitioner's payments to members of the Eddleton family for realty and catering services were/are unreasonable or excessive, the Respondent abused its discretion in concluding that the Petitioner is not "operated exclusively for charitable purposes" merely because the organization purchased property and services from members of the organization or members' families.

With respect to the note and deed of

trust received by a member of the Eddleton family in exchange for realty, the interest rate charged was the prevailing market rate for similar loans in 1981, the year in which the note and deed of trust were executed. Under the "reasonable and non-excessive" standard for payments by a tax-exempt organization to a member or other private individual for property or services, the Petitioner's payments to a member of the Eddleton family pursuant to a fair market value note and deed of trust executed in 1981 should not have been grounds for denial of the Petitioner's application for a bingo permit (record, page 84 and 85). To the contrary, since the loan is fully secured and enforceable, and was issued at the market rate of interest, the organization must be classified, as

one that is "operated exclusively for .....charitable.....purposes." The deed was recorded. The purchase price was fair based on three independent appraisals (2 real estate, 1 fixtures). Respondent has had all this material since 1981 (Addendum page 58).

Respondent's complaint that only $322.00 was used for charitable purposes out of over $800,000.00 gross is false. Respondent misleads the court by ignoring over $53,000.00 in mortgage payments, $2,547.00 paid to Mrs. Eddleton for feeding over 400 deaf and hearing impaired persons at the seminar, $640.00 to other charities as provided for in Petitioner's bylaws, and a 1993 cash savings of over $20,000.00 for 1993 in Petitioner's charitable accounts. Also

over $ 700,000.00 in prizes was paid and the Respondent only questions a very few small expenditures.

Other organizations are given credit on the Respondent's graph for "donations" from their bingo accounts to their operating accounts. Why should the Petitioner be treated differently when it pays its mortgage, a lawful use of proceeds, from its donations to its operating account.

The Petitioner has never been charged with any criminal offense. None of its members have been charged or convicted of any offense relating to bingo, and, the Court acknowledged this. The Court approved of the way the Petitioner handled its real estate transaction and noted that not one cent was stolen (Tr. page 100, lines 9 and

10).

Respondent is estopped from reaching a final decision on Petitioner's Application for a permit until Petitioner has had a reasonable time to comply with Respondent's recent request for refinancing.

Court had evidence that Petitioner had sought refinancing, although it was not required to do so. Petitioner had been informed that mortgage refinancing for a commercially speculative venture was difficult, if not impossible to obtain (Tr. page 11), and Mr. Ayers was not allowed to testify on Petitioner's earlier efforts to refinance. Again, the Court knew Petitioner's mortgage had always been approved in the past.

The Court simply denied fundamental

fairness by refusing to accept Petitioner's estoppel arguments. United States v. 198.73 Acres of Land, 800 F 2d 434 (4th Cir. 1986); Joyner v. Garrett, 751 F. Supp. 555 (E.D. Va. 1990); City of Richmond v. Virginia Bonded Warehouse, Co., 148 Va 60 138 S.E. 503 (1927); and its Laches Arguments (Tr. page 49, lines 4-7).

By annually approving almost the same expenditures, the Petitioner's membership, officers, organization, and by Joe Casey's letter (Record page 106) of January 26, 1993, leading Petitioner to believe it only needed to file a membership list to obtain a permit, Respondent cannot now deny its permit. The Respondent cannot put new or changed requirements on a permit holder after the fact. Kendall Park Chapter of Deborah v.

City of Brunswick, 387 A 2d 1214. See also Williams v. New York Club of Florida, Inc. 440 Southern 2d 1324 (mandamus issued directing county tax collector to issue permit to conduct bingo games, despite collectors concerns about violations of law governing bingo operations.)

The Court denied fundamental fairness by treating the sale of the property as violation by Mr. Ayers of the bingo laws (Tr. page 101, line 12 and 13). "A sale of property by private individual to non-profit organization with payments to be made from proceeds of bingo games", does not violate bingo laws. Opinion, Attorney General of Minnesota, 733-G, September 10, 1947; see Minnesota Code Section 349.15, page 350).

The Court denied fundamental fairness by construing the "operated exclusively" clause against Petitioner, Jennings v. Com. 109 Va. 821; Campbell v. Com. 76 Va. 564.

Respondent failed to prove any individual or class of individuals, needed protection, justifying Respondent's intrusion into Petitioner's charitable affairs (Tr. page 98). The deaf are harmed by Respondent's acts (Tr. page 98). The Court denied Petitioner fundamental fairness by making personal references to bingo and many other years hearings, when only 1981 and 1985 resulted in litigation (1981 rent case which was dropped after MAI rent appraisal; 1985 operating case which ended when Petitioner allowed access to its operating account and no violations

were discovered), by referring to a partially built building on Petitioner's property when no such building exists (Tr. page 99, 101, 103, 109, 110).

The Court denied Petitioner fundamental fairness by not considering letters of support from hundreds of citizens and from the interpreter (Appellant Addendum page 102, 140, 168) and from not granting a stay pending this appeal (Tr. 111); and by saying the Eddleton family wants to do everything the "hard way" because Petitioner has always acted in a legally correct manner (Tr. page 100).

The Court denied the Petitioner fundamental fairness by finding that there is no record of income, proceeds, or cash and that was the concern in

1985, (Tr. page 100, line 21--23), because all quarterly and annual reports listing proceeds, cash and expenditures have always been approved (Addendum page 117--120). The Court's reference to 1985 had nothing to do with the facts of this case, because since 1985 Respondent has had full access to all bingo and operating accounts. All reports of cash and disbursements have always been approved by the Respondent (Record page 69--71 and page 135--177).

The Court denied Petitioner fundamental fairness by stating "the problem that we are having today is not that the Eddleton family is stealing anything, or that they don't want to do good for the Deaf", (Tr. page 100, line 7--10).

The Courts comments made no sense

considering that over $730,831.00 (including real estate acquisition has been donated for the deaf and other charitable organizations (Add. page 169--218); Tr. page 92, Line 16-23) (Petition to Rehear page 13--14). The Respondent's own exhibit proves Petitioner has a good reputation in the deaf community (Record page 205, Exhibit 10). The only uncontradicted evidence before the Court was of its many services to the deaf and other charities.

The Court erred by speculating on what might happen in 2027 when we pay the mortgage off (Tr. page 107, line 24--25, page 108, line 1--21) (Exhibit 9). When are cases decided on what might happen in 2027?